

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.684 of 1987
Date of Decision: 13.09.2006

Geeta

Appellant

versus

Punjab State and others

Respondents

CORAM:- HON'BLE MR. JUSTICE JASBIR SINGH

Present: Shri Maharaj Baksh Singh, Advocate for the appellant
Shri B.S.Sewak, DAG Punjab
Shri Ramesh Kumar, Advocate for respondent No.3

Jasbir Singh, J. (Oral)

This order will dispose of four appeals bearing FAO Nos.684, 685, 895 and 896 of 1987. Facts are being mentioned from FAO No.684 of 1987 filed by the claimant.

It was case of the appellant-claimant that she, along with her mother and father, was traveling from Jalandhar to Phagwara in a bus owned by respondent No.1 bearing No.PUX-7137 of Nawanshahar Depot. When the bus reached near bone factory, Phagwara, it struck against the tree and in that accident, she suffered various injuries. Her mother was also injured. Appellant filed an application to claim damages, which was disposed of by granting Rs.3000/- to her towards compensation. Hence, this appeal.

In the grounds of appeal, it has been said that on account of injuries suffered by the appellant in the accident, her 4th and 5th toe of the right foot were to be amputated. This has resulted into permanent disability, as it is not possible for her to run/ walk fast. It has further been mentioned that the injuries suffered have caused damage to her future. By stating that

compensation awarded is very less, a prayer has been made to enhance the same.

Second appeal bearing FAO No.685 of 1987 has been filed by Smt.Neelam Prabha, who is mother of the appellant in the appeal, referred to above. She also claimed enhancement of compensation.

Other two appeals have been filed by driver of the offending vehicle, wherein a prayer has been made that as he was not at fault, the judgment, under challenge, be set aside.

Counsel for respondent No.3 the driver of the offending vehicle, by referring to the statements of the witnesses, has tried to show to this Court that for causing accident, driver was not at fault. He only made an attempt to save the vehicle being struck against the bus coming from the opposite side and in that process, accident had occurred. This Court feels that the negligence in causing the accident, of respondent No.3, is writ large from the evidence on record. Vivid description of the accident, the manner in which it had taken place, was given by Smt.Neelam Prabha, the claimant, who had stepped into the witness box. She has stated that the bus was being driven in a rash and negligent manner when another bus tried to over take the bus in question, the driver could not control the same and it struck against the tree, by going to the extreme left side, after crossing the un-metalled portion of the road. It is not in dispute that the accident had occurred on the G.T.Road, which is wide enough and that 2-3 buses can cross easily. It is also not in dispute that beyond the metalled portion of the road, there was a gap of 8/10 feet i.e. un-metalled portion and beyond that space, the trees were there. After going to the extreme left side and crossing the un-metalled portion, the bus had struck against a tree, which clearly indicates that the driver was at fault and the bus was driven at a very high

speed. The finding given to that extent is perfectly justified and accordingly appeals bearing FAO Nos.895 and 896 of 1987 filed by the driver, are dismissed.

So far as appellant Ms.Geeta, in this case is concerned, she was minor. It has come on record that due to accident, she suffered injuries, which resulted into amputation of her 4th toe of the right foot and partial amputation of the 5th toe. She remained admitted in the hospital. Thereafter, she continued to visit the hospital for 10/15 days for dressing etc. The Tribunal has not appreciated a fact that the injuries, referred to above, have resulted into permanent disability. Dr.Amrik Singh Parmar has clearly stated that due to amputation of her toes, it is not possible for the minor child to run fast which, she otherwise would have been in a position to do. This Court feels that due to the injuries, future prospects of the child, like marriage etc. were also damaged. The compensation awarded is too meager. Keeping in view facts and circumstances of this case, amount of compensation is enhanced to Rs.30,000/-. The Tribunal has awarded compensation along with interest @ 12% p.a., which this Court feels is on the higher side and it is ordered that the appellant/ claimant shall be entitled to get interest @ 10% p.a. from the date of moving the application for compensation till realisation of the amount. Appeal stand allowed in above mentioned terms.

So far as prayer of Smt.Neelam Prabha appellant in FAO No.685 of 1987 for enhancement of compensation is concerned, the same is also justified. It has come on record that due to accident, she has suffered various injuries including fracture of the upper end of the shaft of left tibia. She remained in the hospital for many days and thereafter she was advised six months bed rest. The accident had also left a permanent scar on her

face. She was a teacher and it has come on record that due to fracture, referred to above, she had got a permanent limp, which was not cured even after medical treatment. She was granted compensation of Rs.26,600/- under various heads. This Court feels that the amount awarded towards pain and suffering is very less, the same is enhanced to Rs.15,000/- instead of Rs.5000/-. Furthermore, regarding permanent scar on face of the appellant, she was granted Rs.2000/-, this Court feels that the same is very less and is enhanced to Rs.20,000/-. Furthermore, it is not in dispute that the accident has left a limp in the left leg of the appellant, which as per doctor is permanent. The Court has granted only Rs.7000/- with regard to that injury, which, this Court feels, is also very less and the same is increased to Rs.20,000/-.

In view of facts mentioned above, this appeal as well as the appeal of Neelam Prabha is also allowed and she is held entitled to claim Rs.41,000/- more over and above the compensation already awarded by the Tribunal. She is further held entitled to claim interest @ 10% from the date of moving the application till realisation of amount.

September 13, 2006
gk

(Jasbir Singh)
Judge